NOTES OF CASES.

Attorney and Client—Negligence in Examining Title.—In Jacobsen *v.* Peterson, 103 Atl. 983, the Supreme Court of New Jersey held that an attorney, who is employed to investigate the title to real estate, is liable for any injury that may result to his client from negligence in the performance of his duties.

The court said: "It is the duty of an attorney, who is employed to investigate the title to real estate, to make a painstaking examination of the record, and to report all facts relating to the title. He is therefore liable for any injury that may result to his client from negligence in the performance of his duties; that is, from a failure to exercise ordinary care and skill in discovering in the records and reporting all the deeds, mortgages, judgments, etc., that affect the title in respect to which he is employed. Economy B. & L. Ass'n *v.* West Jersey Title Co., 64 N. J. Law, 27, 44 Atl. 854. In the present case it appeared, and the trial judge properly found, that the defendant negligently overlooked and failed to report a judgment for $380 which was a lien upon the land, the title of which he was employed to examine, and which the plaintiff purchased in reliance upon the defendant's report and without knowledge of the existence of such judgment. There was, therefore, no question as to the defendant's liability.

"The question arises, What was the measure of damages? Where, as here, an attorney negligently omits to report the fact of a judgment, which is a lien upon real estate the title of which he was employed to investigate, and his client purchases such real estate in reliance upon such report and without knowledge of such judgment, the measure of damages is the amount his client is caused to pay out to remove the lien of such judgment. But it appeared that the plaintiff subsequently sold the real estate for a sum in excess of its total cost to him, including the discharge of the judgment, and the trial judge considered that this justified the award of nominal damages only. Not so. The measure of damages was not affected by the sale. It will not do to say that in order for a client to recover for such negligence he must either sell the property at a loss or not sell it at all. He was entitled to all the profit he would have made by the transaction if the title had been as represented."

Electricity—Liability of Telephone Company for Injury to Licensee Using Private Phone.—In Inman *v.* Home Telephone & Telegraph Co., 177 Pac. 670, it was held that where a neighbor of one with telephone service secured permission to use phone, and was injured by electric shock she could not recover from telephone

company in the absence of proof that the injuries were willful, wanton, or malicious.

The court said: "The telephone, unlike other electrically operated instruments, is not highly dangerous, in that its wires do not carry a dangerous current, so we have eliminated from our consideration those cases of liability of conveyers of high electric current for injuries to trespassers, licensees, children, etc., and have only to determine the rights under the Fortune contract. Cumberland Telegraph & Telephone Co. *v.* Martin's Adm'r, 116 Ky. 554, 76 S. W. 394, 77 S. W. 718, 63 L. R. A. 469, 105 Am. St. Rep. 229; Brucker *v.* Gainesboro Telephone Co., 125 Ky. 92, 100 S. W. 240. That contract gave its protection to all persons who were intended to be benefited by it; it assured a right of recovery for mere negligence to the Fortune family, its servants, guests, persons working about the house for the benefit and at the request of the owner, and all persons who could be said to have been in the contemplation of the company and the subscriber as liable to make use of the telephone in the reasonable, ordinary, and customary conduct of a home such as the one involved. Fish *v.* Waverly Electric Light & Power Co., 189 N. Y. 336, 82 N. E. 150, 13 L. R. A., N. S., 226; Union Light, Heat & P. Co. *v.* Arntson, 157 Fed. 540, 87 C. C. A. 1; Southern Bell Telephone & Telegraph Co. *v.* McTyer, 137 Ala. 601, 34 South. 1020, 97 Am. St. Rep. 62; Reagan *v.* Boston Electric Light Co., 167 Mass. 406, 45 N. E. 743; Anderson *v.* Seattle-Tacoma, etc., Ry. Co., 36 Wash. 387, 78 Pac. 1013, 104 Am. St. Rep. 962; Bradley *v.* Sobolewsky, 91 Conn. 492, 99 Atl. 1067. But as to all persons outside the contemplation of the contract, the company, in order to be liable for their injury, must be shown to have been more than merely negligent. The plaintiffs were accustomed to use this telephone; and Fortune had established, in effect, for them a free telephone service. This he could not do, for no such use of this telephone was reasonable or anticipated by the company when it was installed, or sanctioned thereafter.

"It may be that in public or business places such use is taken into consideration when telephones are placed there, and that the company is liable to such users as to subscribers; but the private residence, in the absence of agreement to that effect, is not supposed to be a public telephone station. Those using such telephones for purposes of their own, and not in the interest of the owner of the house, and for their own convenience, and not casually, and not as members of the household, either permanently or temporarily, are at best, as far as the company is involved, bare licensees. City of Greenville *v.* Pitts, 102 Tex. 1, 107 S. W. 50, 14 L. R. A., N. S., 979, 132 Am. St. Rep. 843; State *v.* Chesapeake & Potomac Telephone Co., 123 Md. 120, 91 Atl. 149, 52 L. R. A., N. S., 1170; Cumberland Telegraph & Telephone Co. *v.* Martin's Adm'r,

116 Ky. 554, 76 S. W. 394, 77 S. W. 718, 63 L. R. A. 469, 105 Am. St. Rep. 229. As between Fortune and the plaintiff wife, she was entitled to the exercise of ordinary care for her safety. Hanson *v.* Spokane Valley Land & Water Co., 58 Wash. 6, 107 Pac. 863. But as between the parties to this suit she was no more than a mere licensee, and, no proof having been presented of willful injury, the plaintiffs were not entitled to recovery. Jones on Telegraph and Telephone Companies (2d Ed.), § 218; Minneapolis General Elec. Co. *v.* Cronon, 166 Fed. 651, 92 C. C. A. 345, 20 L. R. A., N. S., 816."

Illegal Transactions—Loan to Pay Gaming Debt.—In Pennsylvania Railroad Company *v.* Rosenfeld (C. C. A.), 249 Fed. 964, it was held that one who lends money to the loser in an illegal transaction, such as gaming or betting, can recover the loan, notwithstanding he knows that the loser is going to pay his indebtedness with it.

The court said: "The circumstances out of which the claim arose are peculiar. One Rodgers had what is known as a 'phone room, in which he made bets on horse races over the telephone. Philip S. Abrahams was in the habit of bringing him bets of third parties, for which service Rodgers paid him a commission of 5 per cent. December 11, 1915, Rodgers gave Abrahams a check for $1,632 to cover bets which he had lost to one Davis and the commission of 5 per cent. This check being unpaid, Abrahams paid Davis. Rodgers lost additional bets with Davis to the amount of $1,180, and on December 23, 1915, gave Abrahams a bill of sale, which was filed in the register's office, for two locomotives and other property, with instructions to raise enough money upon them to pay off the indebtedness of $2,812 and expenses, any surplus to go to Rodgers. December 24th Abrahams transfered this bill of sale by a separate writing, which was not filed, to the plaintiff, Minnie Rosenfeld, to secure the repayment of $2,000 previously advanced by her and applied by Abrahams to paying Rodgers' bets and a further present advance of $900 to Rodgers. Plaintiff knew that the moneys advanced by her were to be used to pay indebtedness incurred in gaming. March 10, 1916, Abrahams sold the two locomotives to the General Equipment Company of New York for $3,000, with the approval of the plaintiff, who did not wish to appear in the transaction, but before delivery Rodgers sold them to the Vulcan Iron Works of Chicago, and delivered them to the Pennsylvania Railroad Company for shipment. The plaintiff demanded possession of them from the company, which refused to deliver them, whereupon this action was brought.

"The real defense is that the plaintiff cannot recover, because of § 993 of the Penal Law of New York (Consol. Laws, c. 40), which reads: 'All things in action, judgments, mortgages, conveyances, and every other security whatsoever, given or executed, by any